

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

Hon. Hugh B. Scott

v.

03CR167S

**DECISION
&
ORDER**

Curtis Vance and Dorian Jennings,

Defendants.

Defendant Dorian Jennings requests a hearing under Franks v. Delaware, 438 U.S. 154 (1978), claiming that there was a material factual misrepresentation in a warrant application allowing for the search of various cell phones and a pager seized from him on August 2, 2003.

A hearing under Franks is warranted if a defendant makes a substantial preliminary showing: (1) that the warrant affidavit includes a false statement or material omission; (2) that the allegedly false statement was made knowingly and intentionally or with reckless disregard for the truth; and (3) that the allegedly false statement is necessary to a finding of probable cause. Franks, 438 U.S. at 171.

In the instant case, in an application for the search warrant in question, DEA Special Agent David Lauer incorporated a previously filed criminal complaint which asserted that Jennings had been seen inside a white van that was connected to a drug transaction on August 2, 2003. The warrant application was made over a year after the criminal complaint was filed, presumably after a full investigation as to the events of August 2, 2003 took place. Based upon the testimony provided at a suppression hearing held in this matter it appears that Jennings was

not observed inside the white van. The allegation that Jennings was in the white van appears to be a significant part of the factual basis set forth in the application for the search warrant as against Jennings.

The government has not addressed this issue in any way in its response to the defendant's motion. (Docket No. 63). Thus, the Court has determined that a Franks hearing is appropriate with respect to the statements included in Lauer's December 14, 2004 affidavit as to Jennings.

The hearing as to the defendants' various omnibus motions is reopened for this purpose. A Franks hearing shall take place before the undersigned on April 12, 2006 at 2:00 p.m. before the undersigned.

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge
Western District of New York

Buffalo, New York
March 16, 2006